UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte RICHARD O. SHULER, LYNN GODBERSEN,
JAMES NORWOOD, JOSEPH YOUNG, WILLIAM FLECK,
DAVID LIND, KEVIN DeHAAN, THOMAS NICHOLSON and
MARCELL J. SARZEN

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Appeal 2008-1979
Application 09/909,587
Technology Center 3600

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Decided: December 22, 2008

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Before: MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
STEVEN D.A. McCARTHY, *Administrative Patent Judges.*

McCARTHY, *Administrative Patent Judge.*

DECISION ON APPEAL

1   The Appellants appeal under 35 U.S.C. § 134 (2002) from the final

2 rejection of claims 1-8 under 35 U.S.C. § 103(a) (2002) as being

3 unpatentable over Bi (US 6,311,178 B1, issued Oct. 30, 2001), Ordish (US

1   2001/0039527 A1, publ. Nov. 8, 2001) and Gransbery, *Bull Breeders Keep*

2   *Track of the Consumer*, BILLINGS GAZETTE, Oct. 17, 1995, at A7; and the

3   rejection of claims 9-11 under § 103(a) as being unpatentable over Bi,

4   Ordish, Gransbery and Pratt (US 5,673,647, issued Oct. 7, 1997). Oral

5   hearing was held October 22, 2008. We have jurisdiction under 35 U.S.C

6   § 6(b) (2002). We REVERSE.

7   Claims 1 and 5 are independent. Claims 2-4 depend from claim 1 and

8   claims 6-8 depend from claim 5. Claim 1 recites a method for marketing

9   cattle in a beef cattle marketplace. Claim 5 recites a system for dynamically

10   marketing cattle. Both claim 1 and claim 5 recite that a cattle information

11   server receives information from a buyer interface defining a plurality of

12   demand profiles. Claim 1 recites that "at least one of the demand profiles

13   specifies a first pre-conditioning program for a group of cattle, a pre-

14   conditioning program comprising any of numerous protocols or criteria that

15   govern the breeding, feeding, management, and health of cattle prior to

16   slaughter." Similarly, claim 5 recites that "at least one of the demand

17   profiles contains information specifying a first pre-conditioning program, the

18   first pre-conditioning program comprising any of numerous protocols or

19   criteria that govern the breeding, feeding, management, and health of cattle

20   prior to slaughter."

21   Bi discloses a computer matching system. (Bi, col. 2, ll. 30-38).

22   When an offer is received from a user, the system stores the offer in an

23   entity in a database. When a requirement is received from another user, a

24   search engine matches the requirement with the offers stored in the database.

25   (Bi, col. 3, ll. 52-57). The offers and the requirements each contain multiple

1   conditions such as product, market position, offer date, delivery date, price

2   and volume. (Bi, col. 4, ll. 10-13 and 51-54). Each condition is assigned a

3   weight indicating the importance of the condition. (Bi, col. 4, ll. 13-16).

4   The search engine compares the conditions in a requirement with the

5   conditions in each offer. The search engine uses the degree of match

6   between each condition in the requirement and the corresponding condition

7   in each offer along with the weights assigned to each condition to calculate a

8   score for each offer. (Bi, col. 4, ll. 56-62). Those offers which match the

9   requirement with scores above a threshold set by the user who submitted the

10 requirement are returned to that user. (Bi, col. 4, ll. 19-22).

11   Ordish discloses using a computer matching system for trading

12 instruments such as commodity futures contracts. (Ordish 2, ¶ 0009).

13 Gransbery states that the challenge for producers in a tight cattle market is to

14 convince customers to invest in high-performance breeding stock. One

15 producer quoted by Gransbery suggests "'[p]roduc[ing] the cattle that is

16 trending toward what the consumer and the packer is demanding. '"

17   The Examiner finds that "commodities such as cattle were popular

18 trading instruments and would have been simple to include in any matching

19 or trading system." (Ans. 5). Based on this finding, the Examiner concludes

20 that it would have been obvious to apply a computerized matching system

21 such as Bi's to cattle markets. (*Id.*)

22   The Appellants contend that the teachings of Bi, Ordish and

23 Gransbery fail to suggest either a cattle information server which receives

24 information defining a plurality of demand profiles specifying pre-

25 conditioning programs for groups of cattle or a method step of receiving

1   such profiles at a cattle information server. (App. Br. 10-11). The

2   Appellants further contend that a beef cattle marketplace such as that in

3   which the method of claim 1 is performed was unknown in the prior art.

4   (Reply Br. 3).

5   The Appellants' Specification asserts that the cattle information server

6   recited in claims 1 and 5 enables cattle producers to locate buyers seeking

7   cattle raised according to specific pre-conditioning programs. (Spec. 15, l.

8   29-31). The cattle information server "enables producers, buyers and

9   veterinarians to track cattle from birth to harvest, thereby allowing them to

10   identify trends regarding how pre-conditioning programs affect particular

11   cattle at the time of harvest." (Spec. 20, ll. 20-23). The Appellants contrast

12   the beef cattle marketplace in which the method of claim 1 is performed with

13   a marketplace for commodity futures contracts, which seek to increase

14   efficiency by trading fungible goods on a large scale without information as

15   to individual characteristics such as how the goods were produced. (App.

16   Br. 12; Reply Br. 3-4). The Appellants' contentions raise the following

17   issue:

18   Have the Appellants shown that the Examiner erred in concluding that

19   the teachings of Bi, Ordish, Gransbery and Pratt would have suggested a

20   method or system for marketing cattle in which information is received at a

21   cattle information server defining a plurality of demand profiles and a supply

22   profile, the supply profile and at least one of the demand profiles specify

23   pre-conditioning programs comprising any of numerous protocols or criteria

24   that govern the breeding, feeding, management, and health of cattle prior to

25   slaughter?

1   The evidence in the record does not show knowledge, prior to the

2 disclosure of the Appellants' Specification, of a non-commoditized beef

3 cattle market based on supply and demand profiles including protocols or

4 criteria that govern the breeding, feeding, management, and health of cattle

5 prior to slaughter. The teachings of Ordish would have suggested applying

6 the computer matching system of Bi to the sale of instruments such

7 commodity futures contracts based on cattle. As discussed earlier, Bi

8 discloses a computer matching system in which the search engine matches

9 offers and requirements based on sets of conditions. Those particular

10 conditions which Bi discloses, such as product identity, market position (that

11 is, prospective buyer or seller), offer date, delivery date, price and volume

12 (Bi, col. 4, ll. 51-54), are the types of conditions which might be of interest

13 in the sale of an instrument. None of the conditions described by Bi relate to

14 the manner in which a product, such as beef cattle, might be prepared for

15 market. The teachings of Bi and Ordish would not have suggested receipt at

16 a cattle information server of a demand profile comprising protocols or

17 criteria that govern the breeding, feeding, management, and health of cattle

18 prior to slaughter.

19   As discussed earlier, Gransbery states that the challenge for producers

20 in a tight cattle market is to convince customers to invest in high-

21 performance breeding stock. Gransbery does not address the mechanisms by

22 which producers sell cattle to buyers. Although Gransbery implies that

23 buyers value certain breeds of cattle over other breeds, Gransbery would not

24 have suggested marketing beef cattle based on protocols or criteria that

25 govern the breeding, feeding, management, and health of the cattle. The

1   teachings of Bi, Ordish and Gransbery would not have suggested receipt at a

2   cattle information server of a demand profile comprising protocols or criteria

3   that govern the breeding, feeding, management, and health of cattle prior to

4   slaughter.

5   The Appellants have shown that the Examiner erred in concluding that

6   the teachings of Bi, Ordish, Gransbery and Pratt would have suggested a

7   method or system for marketing cattle in which information is received at a

8   cattle information server defining a plurality of demand profiles and a supply

9   profile, the supply profile and at least one of the demand profiles specify

10 pre-conditioning programs comprising any of numerous protocols or criteria

11 that govern the breeding, feeding, management, and health of cattle prior to

12 slaughter. The Appellants have shown on the record before us that the

13 Examiner erred in rejecting claims 1 and 5 under § 103(a). Since claims 2-4

14 depend from claim 1 and claims 6-8 depend from claim 5, the Appellants

15 have shown that the Examiner erred in rejecting claims 2-4 and 6-8 under

16 § 103(a). *In re Fritch*, 972 F.2d 1260, 1266 (Fed. Cir. 1992).

17   Claim 9 also is independent. Claims 10-11 depend from claim 9.

18 Claim 9 recites a method for tracking cattle production in a beef cattle

19 marketplace. In particular, claim 9 recites

20   receiving information defining a supply
21   profile at [a] cattle information server from [an]
22   interface, wherein the supply profile specifies a
23   pre-conditioning program of an identified group of
24   cattle, the pre-conditioning program comprising
25   any of numerous protocols or criteria that govern
26   the breeding, feeding, management, and health of
27   cattle prior to slaughter.
28

1   Pratt discloses a computerized process for recording, measuring,

2   sorting and tracking individual animals in a feedlot. (Pratt, col. 6, ll. 37-42).

3   When a group of cattle enters the feedlot, information such as the age, the

4   genetic background and the physical measurements of the cattle are received

5   and stored in a host computer. (Pratt, col. 28, l. 64 – col. 29, l. 16-27).

6   During the stay of the cattle at the feedlot, feeding information such as ration

7   composition and management and health information such as implants,

8   ionophores and processing information is received and stored in the host

9   computer. (Pratt, col. 29, ll. 21-27). Once the cattle are slaughtered, their

10   carcass characteristics are received and stored in the host computer for

11   correlation with the live performance data of the cattle from the feedlot.

12   (Pratt, col. 16, ll. 33-41).

13   The Examiner concludes that the teachings of Bi, Ordish and

14   Gransbery suggest the step of receiving information defining the supply

15   profile at the cattle information server. (Ans. 5-6). The Examiner relies on

16   Pratt solely to suggest the last four steps of claim 9. (Ans. 6-7). The

17   Appellants' contentions raise the following issue:

18   Have the Appellants shown that the Examiner erred in concluding that

19   the teachings of Bi, Ordish, Gransbery and Pratt would have suggested a

20   method for tracking cattle production in which information is received at a

21   cattle information server defining a supply profile specifying a pre-

22   conditioning program comprising any of numerous protocols or criteria that

23   govern the breeding, feeding, management, and health of cattle prior to

24   slaughter?

1   As discussed in connection with the rejections of claims 1 and 5, Bi,

2   Ordish and Gransbery do not suggest such a step. The Examiner does not

3   rely on Pratt as supplementing the teachings of Bi, Ordish and Gransbery so

4   as to suggest the receipt of information defining the supply profile at the

5   cattle information server.

6   The Appellants have shown that the Examiner erred in concluding that

7   the teachings of Bi, Ordish, Gransbery and Pratt would have suggested a

8   method for tracking cattle production in which information is received at a

9   cattle information server defining a supply profile specifying a pre-

10   conditioning program comprising any of numerous protocols or criteria that

11   govern the breeding, feeding, management, and health of cattle prior to

12   slaughter. The Appellants have shown on the record before us that the

13   Examiner erred in rejecting claim 9 under § 103(a). Since claims 10 and 11

14   depend from claim 9, the Appellants have shown that the Examiner erred in

15   rejecting claims 10 and 11 under § 103(a). *Fritch,* 972 F.2d at 1266.

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17   DECISION

18   We REVERSE the rejections of claims 1-11.

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20   <u>REVERSED</u>

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